

to be used for base purposes for that crop year in determining the 4-year average, but shall not select both the initial commodity and subsequent commodity.

(e)(1) An owner may increase the eligible acres of soybeans and other oilseeds on a farm by reducing the contract acreage determined in accordance with paragraph (a)(2)(i) of this section for one or more covered commodities on an acre-for-acre basis, except that the total base acreage for soybeans and each other oilseed on the farm may not exceed the four-year average of each oilseed determined under paragraph (a)(2)(ii) of this section.

(2) For the purpose of determining a 4-year average acreage for a farm under this section, any crop year in which a covered commodity was not planted shall not be excluded.

(f) For the purposes of this section, acreage planted, or prevented from being planted, to popcorn shall be considered as acreage planted to corn.

[67 FR 64751, Oct. 21, 2002, as amended at 68 FR 37939, June 26, 2003]

§ 1412.202 Failure to make election.

If an owner fails to make an election for establishing base acres on a farm by April 1, 2003 in accordance with § 1412.201, that owner shall be deemed to have made the election to determine all base acres for all covered commodities on the farm as set forth in § 1412.201(a)(2).

§ 1412.203 Base acres and Conservation Reserve Program.

(a) Subject to paragraphs (d) and (e) of this section, eligible producers may, at the beginning of each fiscal year, adjust the base acres for covered commodities and peanuts with respect to the farm by the number of crop acreage base acres protected by a Conservation Reserve Program contract entered into under section 1231 of the Food Security Act of 1985 (1985 Act) that expired or was voluntarily terminated on or after May 13, 2002.

(b) Subject to paragraphs (d) and (e) of this section, eligible producers may, at the beginning of each fiscal year, adjust the base acres for covered commodities and peanuts with respect to the farm by the number of cropland

acres reduced by a producer on a CCC-approved standard, uniform form designated by CCC in order to enroll such acres in a conservation reserve program contract entered into under section 1231 of the 1985 Act. Eligible producers may adjust base acres only when the Conservation Reserve Program contract entered into under section 1231 of the 1985 Act expires or is voluntarily terminated on or after May 13, 2002.

(c) Subject to paragraphs (d) and (e) of this section, if neither paragraphs (a) nor (b) of this section apply, the Deputy Administrator may allow eligible producers to adjust base acres for covered commodities and peanuts with respect to the farm in a manner determined acceptable by the Deputy Administrator when a Conservation Reserve Program contract entered into under section 1231 of the 1985 Act expires or is voluntarily terminated on or after May 13, 2002.

(d) The total base acreage on a farm shall not exceed the limitation in accordance with § 1412.204.

(e) Adjustments to base acreage on a farm in accordance with this section must be completed by no later than April 1 of the fiscal year following the fiscal year the conservation reserve program contract expired or was voluntarily terminated.

(f) For the fiscal year in which an adjustment to base acres under this section is made, the owner of the farm shall elect to receive either direct payments and counter-cyclical payments with respect to the base acres added to the farm under this section or a prorated payment under the conservation reserve contract, but not both.

§ 1412.204 Limitation of total base acreage on a farm.

(a) The sum of the following shall not exceed the total DCP cropland acreage on the farm, plus approved double-cropped acreage for the farm:

(1) The sum of all base acres established for the farm in accordance with this subpart, plus

(2) Any base acres established for the farm for peanuts in accordance with subpart G of this part, plus

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(3) Any cropland acreage on the farm enrolled in a conservation reserve program contract in accordance with part 1410 of this chapter, plus

(4) Any cropland acreage on the farm enrolled in a wetland reserve program contract in accordance with part 1467 of this chapter, plus

(5) Any other acreage on the farm enrolled in a conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage.

(b) The Deputy Administrator shall give the owner of the farm the opportunity to select the covered commodity base acres or peanut base acres, against which the reduction required in this section will be made.

(c) In applying paragraph (a) of this section, CCC will take into account the practice of double cropping on a farm, as determined by CCC.

Subpart C—Establishment of Yields for Direct and Counter-Cyclical Payments

SOURCE: 67 FR 64751, Oct. 21, 2002, unless otherwise noted.

§ 1412.301 Direct payment yields for covered commodities, except soybeans and other oilseeds.

(a)(1) The direct payment yield for each covered commodity, except soybeans and other oilseeds, shall be the payment yield established for the commodity for the farm in accordance with the regulations for feed grain, rice, upland cotton and extra long staple cotton, wheat and related programs at part 1413 of this chapter in effect on January 1, 1996 (see 7 CFR part 1413, revised as of January 1, 1996). CCC shall adjust the payment yield to reflect the additional payments made in accordance with 7 CFR 1413.15.

(2) In the case of a farm for which a payment yield in accordance with paragraph (a)(1) of this section is unavailable for a covered commodity, except soybeans and other oilseeds, the county committee shall assign a payment yield for such covered commodity on the farm based upon the direct payment yield for such covered commodity on at least three similar farms physically located in the county with simi-

lar yield capability, including similar land and cultural practices.

(i) If fewer than three similar farms are physically located in the county, the State committee shall assign a payment yield for such covered commodity based upon the direct payment yield for such covered commodity on at least three similar farms in the surrounding area with similar yield capability, including similar land and cultural practices, or as determined by the Deputy Administrator.

(ii) Payment yields of similar farms shall be based on the farms' payment yields before such yields are updated in accordance with this section.

(b) For the purposes of this section popcorn shall be considered as corn.

[67 FR 64751, Oct. 21, 2002, as amended at 68 FR 37939, June 26, 2003]

§ 1412.302 Direct payment yield for soybeans and other oilseeds.

(a) The direct payment yield for soybeans and each other oilseed for the farm shall be determined by multiplying the weighted average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (b) of this section, times the ratio resulting from:

(1) The national average yield for the crop for the 1981 through 1985 crop years, as determined by CCC, divided by

(2) The national average yield for the crop for the 1998 through 2001 crop years, as determined by CCC.

(b)(1) The yield per planted acre for soybeans and each other oilseed on the farm, to be used for direct payment purposes, is calculated as follows:

(i) The sum of the production of the crop for the 1998 through 2001 crop years, as determined in accordance with paragraph (b)(2) of this section; divided by

(ii) The sum of the total planted acres of the crop for the 1998 through 2001 crop years.

(2) The production of the crop for each of the 1998 through 2001 crop years shall be the higher of the following, except in a year in which the acreage planted to the crop was zero, in which case the production for the crop for such year shall be zero: